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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **IN AND FOR THE DISTRICT OF NEVADA**

12 STEPHANIE SHARP, CYNTHIA
13 MARTINEZ, PATRICIA SPEIGHT,
14 LAURA VIRAMONTES GARCIA,
15 REBECCA GAROUTTE, ANTHONY
16 BAKER, SHARENE WAGONER, & RUBY
17 LOPEZ COLOCHO,

Case No.: 3:20-cv-00654-MMD-CLB

18 Plaintiffs,

19 vs.

20 S & S ACTIVEWEAR, L.L.C.

21 Defendant.

22 **FIRST AMENDED COMPLAINT**
23 **AND JURY DEMAND AND**
24 **COLLECTIVE ACTION**
25 **ALLEGATION COMPLAINT**

26 _____ /
27 COME NOW plaintiffs, through counsel, and hereby complain of defendant as follows:

28 Jurisdiction, Venue & Jury Demand

1. Seven of the named plaintiffs are adult women and one is an adult man who, while employed by defendant in northern Nevada, resided in northern Nevada. All, or almost all, acts, statements and omissions herein alleged occurred in northern Nevada. All plaintiffs timely filed administrative complaints, and then Charges of Discrimination with the Nevada Equal Rights Commission. Plaintiffs requested and received “Notice[s] of Right to Sue” from the Equal Employment Opportunity Commission. Copies of the Notices of Right to Sue plaintiffs obtained accompanying this Complaint and Jury Demand and are incorporated herein. Plaintiffs hereby request a jury trial relative to all issues so triable. Plaintiffs intend to move

1 for class certification and wish to place defendant on notice at an early stage – hence the
2 manner in which this case is entitled.

3 2. Defendant employed approximately two hundred and fifty to three hundred persons
4 at the subject facility, which is quite large, i.e., totaling in excess of approximately 700,000
5 square feet. The gender mix, i.e., the ratio of women to men was roughly equivalent.
6 Defendant allowed sexually abusive and misogynistic “music” to be routinely played from
7 various locations throughout this large facility, i.e., from approximately five different electronic
8 speakers. The electronic speakers tended to be powerful and of good quality. Accordingly, the
9 lyrics of the various songs could be clearly heard from a considerable distance, e.g., from
10 several hundred feet. That is, because of the background noise of the warehouse, the music
11 was played very loudly, so as to enable it being heard over the background noise. Defendant
12 allowed various employees and managers to stream the music into the speakers for a protracted
13 period, i.e., from shortly after defendant began operating the facility until the late winter or
14 early spring of 2020 – at which time defendant became aware some of the named plaintiffs had
15 retained counsel and intended to initiate this lawsuit. Plaintiffs became familiar with the
16 sentiments of a large number of their co-employees regarding the rap music. Many of those co-
17 employees, especially women, expressed their feelings and perceptions – to the effect the music
18 was offensive and degrading to women. The rate of employee turnover at this recently opened
19 warehouse, during the time plaintiffs were employed, was high. Accordingly, there is a pool of
20 potential women plaintiffs which probably totals in excess of at least 200 persons, i.e., a pool
21 of female potential plaintiffs who probably were offended by the misogynistic and sexually
22 abusive music, and related conduct. Further, a number of men who were employed were
23 offended by the music and related conduct “because of sex”. And, as with plaintiff Anthony
24 Baker, a number of men were offended both by the music and related conduct – and by their
25 inability to protect their female co-workers therefrom. That is, they were offended “because of
26 sex” as defined by Title VII of the 1964 Civil Rights Act.
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1 8. Plaintiffs bring this collective action for injunctive, declaratory and monetary relief
2 pursuant to 29 U.S.C. sec. 216(b) on behalf of the following Collective Action: During any
3 period from approximately six weeks after defendant commenced commercial operations at the
4 subject location until the end of March, 2020, S & S Activewear engaged in systemic sexual
5 harassment against the Class/Collective members. S & S Activewear, despite being on notice
6 of the character of offensive music, authored by such musicians as Too Short (see, e.g.,
7 “Blowjob Betty”), and Eminem (see, e.g., “Stand”), Lil Wayne, and other “rappers”, was
8 sexually graphic, violently misogynistic and offensive to women because of the repetitive use
9 of gender-offensive terms such as “bitch” and “c__t”, allowed the music to be loudly, clearly
10 and frequently played in its work environment, in the presence of many managerial employees.
11 S & S Activewear allowed the music to be played despite the fact a number of employees
12 complained thereof, i.e., employees specifically complained of the sexually abusive, graphic
13 and violently misogynistic character of the music. S & S Activewear continued to allow the
14 music to be played until such time it became of the fact a number of employees retained
15 counsel and intended to bring a Title VII action, based primarily on the fact the work
16 environment was permeated with offensive “rap” music.

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18 9. S & S Activewear disregarded the sexual harassment prevention policy which it
19 promised its employees would protect them from sexual hostility. S & S Activewear flouted
20 federal law, i.e., 42 U.S.C. 2000e, et seq., aka Title VII, by routinely subjecting every person in
21 its work environment to sexually offensive and violently misogynistic music.

22 10. Certain named plaintiffs seek to be appointed as representatives of the Collective
23 Action. That is, Stephanie Sharp, who worked in the subject warehouse from December 11,
24 2018 until August 1, 2019, and performed non-managerial warehouse labor; Patricia Speight,
25 who worked in the subject warehouse from November 15, 2018 until May 30, 2019, and
26 performed non-managerial warehouse labor; and Rebecca Giaroutte, who worked in the subject
27 warehouse from January 21, 2019, until August 12, 2020, and performed non-managerial
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1 warehouse labor, will be identified as class representative. The class representatives have
2 interests which are closely aligned, if not identical, with the class members, and experienced
3 the same offensive music, and the same, or similar instances of sexual abuse which the other
4 class members did.

5 11. There are many similarly situated Collective Action Members, i.e., certainly in
6 excess of one hundred, and perhaps in excess of three hundred, who would benefit from the
7 issuance of a court-supervised notice of the present lawsuit and the opportunity to join the
8 present lawsuit. Notice should be sent to the Collective Action Members pursuant to 29 U.S.C.
9 sec. 216(b).

10 12. Questions of law and fact common to plaintiffs and Collective Action Members
11 include, but are not limited to, the following:

12 a. Whether and how frequently did defendant cause or allow sexually
13 abusive/misogynistic rap music to be loudly played in its work environment?

14 b. Whether some of defendant's managerial employees arranged for sexually
15 abusive/misogynistic rap music to be played in the subject warehouse work environment, e.g.,
16 by streaming such music from I-phones or other electronic devices to speakers located in the
17 defendant's workplace?

18 c. Which of defendant's Managers were aware sexually offensive/misogynistic rap
19 music was being played?

20 d. Whether defendant allowed and/or encouraged the playing of said music even after
21 receiving complaints from plaintiffs and/or other employees about the sexually offensive and/or
22 misogynistic character of the music?

23 e. Whether defendant should be accorded immunity based upon the existence of a
24 written sexual harassment policy and the manner in which was enforced/or not enforced?

25 13. Plaintiffs bring this action as a class action re the persons described above for
26 injunctive, declaratory and monetary relief pursuant to Federal Rule of Civil Procedure 23(a),
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1 (b)(2), (b)(3) and (c)(4) for violations of Title VII of the 1964 Civil Rights Act, aka 42 U.S.C.
2 2000e, et seq.

3 14. Plaintiffs are members of the Class they seek to represent.

4 15. This action is properly maintained as a class action. The Class satisfies all the
5 requirement of FRCP 23 for maintaining a class action.

6 16. **Ascertainability.** The potential members of the Class are known to S & S
7 Activewear, i.e., defendant's business records memorialize the names, job titles, dates of
8 employment, various data by which potential members may be located and identified, including
9 last known addresses (physical and email), and telephone numbers.

10 17. **Numerosity.** The Class is so numerous that joinder of all members is impractical
11 and the disposition of their claims in a class action will provide substantial benefits to the
12 parties and the Court. There are at least 200 potential members of this Class.

13 18. **Existence and predominance of common questions of law or fact.** There are
14 questions of law or fact that are common to the Class. These common questions predominate
15 over questions affecting individual Class Members, i.e., the questions which affect individual
16 members involve the subjective determination of damages. However, even those questions
17 tend to implicate common questions, to wit, to what degree does the repetitive playing of
18 sexually obscene and misogynistic music affect a reasonable woman. The variations re the
19 answer re individual plaintiffs are overshadowed by the common questions of fact and law.
20 The primary questions which affect only individual class members involves questions whether
21 a particular Class Member was subject to retaliation for having opposed the playing of sexually
22 abusive/misogynistic music. However, even with regard to questions/issues of retaliation,
23 common questions of law or fact will predominate, e.g., what policy did defendant maintain
24 and enforce regarding complaints of sexual harassment and/or prevention of sexual
25 harassment?; did defendant routinely conduct thorough investigations regarding complaints of
26 sexual harassment and/or hostility?; did defendant perceive complaints regarding rap music as
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1 constituting complaints of sexual harassment/sexual hostility?; and did defendant factor the
2 adverse effects of sexually abusive/misogynistic rap music when making employment decisions,
3 e.g., decisions whether to discipline and/or terminate a particular employee?

4 19. **Typicality.** Plaintiffs' primary claims, i.e., of a sexually hostile work
5 environment, are typical of those of the Class Members because they were subject to the same
6 employment practice, i.e., allowing sexually abusive/misogynistic rap music to be disseminated
7 through the workplace via approximately five high-powered speakers. Defendant does not
8 possess any defenses which are unique to the plaintiffs re their primary cause of action.

9 20. **Adequacy of representation.** Plaintiffs will fairly and adequately protect the
10 interests of the Class and the Class Representative and counsel have no interests adverse or
11 antagonistic to the interests of the other members of the Class. Plaintiffs have retained
12 competent counsel who is experienced in sexual harassment/retaliation cases. Counsel will
13 shortly associate with an attorney experienced in prosecuting class action cases.

14 21. **Superiority.** A class action is superior to other methods for the fair and efficient
15 adjudication of the claims asserted herein. A class action will permit the large number of
16 similarly situated persons to prosecute their common claims in a single lawsuit and in a single
17 forum simultaneously and efficiently, without duplication of time, effort and expense which
18 would attend the prosecution of multiple individual actions. Further, the prosecution of a class
19 action will be consistent with the legislative goals underlying Title VII and will allow all
20 potential plaintiffs who were offended by the rap music an opportunity to seek legal redress.

21 Class action is appropriate because S & S Activewear violated the rights of its
22 employees on a wholesale basis, i.e., it allowed its work environment to be polluted with
23 sexually abusive and violently misogynistic rap music openly, for almost two years. S & S
24 Activewear, when confronted with its misconduct, denied it allowed such music to be played.
25 S & S Activewear has no legitimate rejoinder to the witnesses who have come forward, or for
26 instance, to the electronic recording of such music being openly played, while employees
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1 within earshot worked in a normal manner (that is, they were obviously accustomed to the
2 playing of rap music). Class certification is appropriate because common questions of law and
3 fact strongly predominate over any questions affecting individual member and because a class
4 action is a superior method for resolving the disputes presented by this case. Another factor
5 which militates for class certification involves consideration of the economic disparity between
6 the parties, i.e., the plaintiffs are working people who earn wages consistent with unskilled
7 labor (approximately \$17.00 per hour). The individual plaintiffs, almost on a uniform basis, do
8 not possess the requisite resources to retain competent counsel on an hourly basis. The only
9 practical way for such similarly situated employees to obtain legal representation is via
10 application of FRCP 23.

11 First Cause of Action

12 (Sexual Harassment)

13 22. Plaintiffs hereby incorporate the allegations of paragraphs 1 through 21, inclusive,
14 aswell as all other paragraphs herein, as though the same were fully stated.

15 23. Plaintiffs were employed by defendant in non-managerial positions. Any
16 supervisory tasks and/or authority which any plaintiffs may have had or exercised were fairly
17 insignificant. That is, none of the plaintiffs were designated as a “Manager”, or functioned as
18 such. Throughout much, or in most instances, all, of their tenures plaintiffs were subject to
19 sexual and/or gender harassment “because of sex”, a prohibited by 42 U.S.C. sec. 2000e, et seq.
20 Plaintiffs’ work environment was rendered hostile and offensive primarily by repeated and
21 prolonged exposure to sexually foul and abusive music, i.e., “hiphop” or “rap” music.
22 Defendant permitted a number of its employees and managers to routinely and loudly play this
23 music in its work environment. The subject work environment is large, i.e., totaling in excess
24 of 700,000 square feet. The music from any particular speaker could not be heard throughout
25 the entirety of this large work environment. On any given day a number of speakers were used
26 by defendant’s employees and/or managers to stream music from various locations into the
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1 work environment. That is, defendant's employees and managers would use "Blue Tooth" to
2 stream music from commercial sources into the approximate five electronic speakers. The
3 music of which plaintiffs complained did not customarily, or ever, emanate from radio stations
4 regulated by the Federal Communications Commission (FCC). The offensive music could be
5 heard through much of the workplace, albeit not the entire workplace. On occasion, various
6 employees placed speakers on a forklift, or other powered vehicles, and drove about the subject
7 facility, while loudly broadcasting the offensive music via a speaker which had been placed on
8 the vehicle. By allowing the playing of obscene and misogynistic rap music defendant
9 effectively negated any effect attendant to the dissemination of its paper sexual harassment
10 policy and instead implicitly ratified and/or invited a myriad form of sexually and gender-
11 offensive conduct. This implicit repudiation of a reasonable sexual harassment policy resulted
12 in a myriad form of sexually offensive conduct and statements. For instance, male employees
13 openly shared pornographic videos, using their cellular telephones. Male employees, including
14 some supervisors, openly made sexual hand gestures, or movements with their bodies, e.g.,
15 pantomiming sexual intercourse. Male employees were treated in a preferential manner
16 relative to female employees. Sexual remarks such as "I would hit that", were openly made by
17 various male employees. Male employees were allowed to yell obscenities and to subject
18 female employees, especially those who complained of sexual harassment, to various forms of
19 retaliatory hostility. In appropriate remarks and inquiries were made by various male
20 employees regarding the sexual orientation of at least one of the plaintiffs.
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22 24. Defendant disseminated a written policy and made various formulaic statements
23 which purported to prohibit its employees from sexual harassment and/or sexual hostility, such
24 as sexually foul music, but nonetheless routinely allowed conduct to occur which directly
25 flouted its ostensible written and verbal promises to employees, to the effect they would be
26 protected from sexual hostility. That is, defendant manifested knowledge re the inappropriate
27 character of the course of conduct alleged herein, and the effects such a course probably would
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1 have on many of its employees, but opted for the conduct because doing so was expedient and
2 easy, i.e., it placated the many employees who wished to listen to such music – in derogation of
3 the emotional health of many employees whom defendant knew, and should have known,
4 would be offended and even traumatized, and re-traumatized. The content of the “music”
5 which defendant routinely allowed to be loudly played at various locations throughout its
6 hostility was incredibly foul and offensive. For instance, women were routinely referred to as
7 “hos” (slang for “whore”), bitches and “c__ts”. Songs such as “Stand”, by Eminem, were
8 loudly played. That particular song touts the act of forcibly placing a pregnant woman in the
9 trunk of a vehicle and then driving the vehicle into a river or other body of water, for the
10 purpose of drowning her. The songs contained extraordinarily graphic and sexually foul
11 content. For example, a number of the songs were by “Too Short”, who routinely writes
12 sexually graphic and very offensive, and misogynistic lyrics. One song, for instance, references
13 and glorifies prostitution. In addition to allowing these foul sexual, violent and misogynistic
14 works to be routinely and loudly played throughout its facility, defendant allowed various male
15 employees, and even managers, to sing along and to accompany their singing with various
16 sexual gestures, e.g., grabbing their clothed genitals, while looking directly at various women
17 employees. In short, in addition to repeatedly and forcefully repudiating the written policy
18 which defendant purportedly maintained, and which it promised it would enforce, the act, or
19 omission, of allowing violently misogynistic and graphically sexually abusive material to be
20 loudly and regularly broadcast throughout its facility actively successfully encouraged other
21 acts and statements of a sexually abusive and/or misogynistic character. By allowing obscene
22 rap music to be routinely and frequently broadcast, defendant S & S Activewear guaranteed its
23 work environment would be offensive “because of sex”, especially re the average hypothetical
24 woman, and relative to most of its women employees. And, a number of men were offended
25 by the manner in which the music portrayed men, and their relationships with women – as well
26 by the fact they could not protect women from being openly abused on a daily basis. were
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1 offended by the music and by various sexually-based statements and actions of their co-
2 employees, often performed in sync with or in conjunction with the music.

3 25. Defendant received notice on a daily, or almost daily basis, of the fact misogynistic
4 and/or sexually offensive music was being openly played in its work environment. Defendant
5 received such notice by virtue of the music itself. That is, on a daily basis, defendant had a
6 number of managers present in the subject workplace and those managers, including high-level
7 managers, could hear the lyrics of the music, which most often used the English language as a
8 venue for communication. That is, defendant's managers knew, and had to have known, songs
9 with obscene and otherwise very sexually offensive and misogynistic lyrics were being loudly
10 and frequently broadcast in defendant's work environment. Furthermore, defendant received a
11 number of complaints, including from some of the named plaintiffs, as well as from various
12 other employees, mostly women, to the effect the music was offensive "because of sex", i.e.,
13 because of the obscene and sexually offensive and misogynistic character of the music.

14 Defendant sometimes responded to such complaints by noting the music motivated employees.
15 Defendant failed to take meaningful and consistent action to halt the music, and otherwise
16 fulfill its promise of a work environment free of sexual hostility, until it learned some of the
17 plaintiffs had retained an attorney and intended to proceed against defendant legally, based on
18 the fact obscene, sexually offensive and misogynistic music had been played in its work
19 environment loudly and on a frequent basis, for almost two years. Part and parcel of the
20 hostility plaintiffs and potential collective action members experienced was defendant's
21 repeated and protracted refusals to investigate and remedy the playing of rap music in its work
22 environment. For instance, notwithstanding its managers having fielded many complaints by
23 employees as to the misogynistic and sexually offensive character of the music, defendant
24 trivialized those complaints, and the foreseeable effects of playing such music. Defendant
25 failed to timely investigate, even though a number of employees complained and/quit and
26 informed defendant they were quitting because of the prevalence of the foul rap music and
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1 various other forms of sexual harassment.

2 26. As a direct and proximate result of being subject to a sexually hostile work
3 environment, plaintiffs suffered emotional distress, loss of enjoyment of life, fear, anger,
4 humiliation, loss of sleep and anxiety. It has been necessary for plaintiffs to incur costs and
5 retain counsel to attempt to vindicate their right to a workplace free from sexual hostility,
6 gender-based hostility and retaliatory hostility.

7 Second Cause of Action

8 (Retaliation/Plaintiff Sharp)

9 27. The plaintiffs hereby incorporate the allegations of paragraphs 1 through 26,
10 inclusive, as well as all other allegations herein, as though the same were alleged herein.
11 Plaintiff Sharp is bringing this Third Cause of Action.

12 28. Plaintiff Stephanie Sharp commenced working for defendant on or about
13 December 11, 2018. She was constructively/wrongfully discharged on or about August 1,
14 2019. Plaintiff Sharp complained to defendant's Human Resources Manager, Mr. David Zink,
15 of the sexually graphic, abusive and misogynistic music. Human Resources Manager Zink
16 responded by telling plaintiff she should attempt to ignore the music. Plaintiff Sharp
17 subsequently complained about sexual by Supervisor Dean Anderson. After she did so,
18 Supervisor Anderson morphed intrinsically sexual harassment into excess scrutiny, i.e.,
19 retaliatory harassment, which is a form of sexual harassment. In May, 2019, plaintiff once
20 again complained of the sexual hostility in her work environment, including the abusive music.
21 She was once again instructed by defendant to attempt to ignore the music.

22 29. A reasonable woman, similarly situated to plaintiff Sharp would have found the
23 work environment to be intolerable. Plaintiff did so experience the work environment and was
24 wrongfully and constructively discharged on or about August 1, 2019. A constructive
25 discharge is a recognized form of retaliation per Title VII.

26 30. Plaintiff subsequently applied for unemployment benefits and her application was
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1 denied. Plaintiff appealed. At the telephonic unemployment appeal hearing defendant
2 appeared, i.e., Human Resources Manager Zink appeared and lied to the Hearing Officer. That
3 is, Mr. Zink told the Hearing Office sexually graphic and misogynistic music had not been
4 played in plaintiff's workplace. Based in material part on Human Resources Manager Zink's
5 lies, the denial of unemployment benefits was affirmed. Defendant's lies, which caused
6 plaintiff to be denied benefits, constitute retaliation.

7 31. As a direct and proximate result of being subject to retaliation plaintiff was injured
8 as described herein. Further, plaintiff Sharp sustained economic damages.

9 Third Cause of Action

10 (Retaliation/Plaintiff Speight)

11 32. Plaintiffs hereby incorporate the allegations of paragraphs 1 through 31, inclusive,
12 as well as the allegations of all other paragraphs stated herein. Plaintiff Speight is bringing this
13 cause of action.

14 33. Plaintiff Speight commenced working for defendant on or about November 15,
15 2018, and was constructively and wrongfully discharged on or about May 30, 2019.
16 Throughout almost the entirety of her employment Ms. Speight was subject to sexually graphic
17 and misogynistic music on a regular basis. She complained on a number of occasions to
18 defendant's Human Resources Manager, David Zink, of the music, but defendant failed to
19 implement any timely remedial action, or to conduct a reasonable investigation. Plaintiff
20 Speight witnessed a number of instances of sexually inappropriate conduct and statements,
21 which occurred on the premises, as alleged herein.

22 34. A reasonable woman, similarly situated to plaintiff Speight, would have found the
23 work environment to be intolerable, as plaintiff Speight did so experience the work
24 environment.

25 35. As a direct and proximate result of being subject to a constructive/wrongful
26 discharge, plaintiff Speight was injured and damaged as described herein and further, suffered
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1 economic damages.

2 WHEREFORE, plaintiffs request the following relief:

- 3 1. For awards of compensatory damages;
- 4 2. For awards of punitive damages sufficient to punish and deter defendant from
- 5 engaging in similar conduct;
- 6 3 For awards of special or actual economic damages relative to those plaintiffs who
- 7 have sustained such damages and pray for such, according to proof;
- 8 4. For an award of costs and a reasonable attorney's fee; and
- 9 5. For injunctive relief to compel defendant to adopt and actually enforce a reasonable
- 10 policy against sexual harassment and/or retaliation, and for whatever other relief the Court or
- 11 jury may deem just.

12 DATED this 19th day of February, 2021.

13
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